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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,889	09/16/2003	Kerry Stephen McClure	27735-11	4514
24256 7590 03/26/2007 DINSMORE & SHOHL, LLP 1900 CHEMED CENTER 255 EAST FIFTH STREET CINCINNATI, OH 45202			EXAMINER LARSON, JUSTIN MATTHEW	
			ART UNIT 3782	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			03/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/663,889

Applicant(s)

MCCLURE ET AL.

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

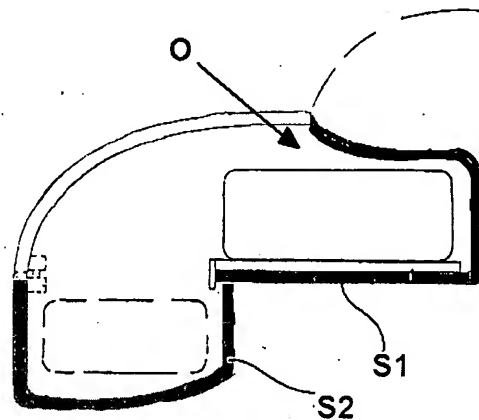
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8, 11, 14-23, and 27 are rejected under 35 U.S.C. 103(a) as being anticipated by Wilson (US 4,230,246 A) in view of Fukushima et al. (2001/0052712).

Regarding claim 1, Wilson discloses a vehicle having a support structure comprising: a first shell (S1, see figure below) attached to the vehicle, the first shell including first and second end portions and a bottom portion (13) extending at least partially between the first and second end portions, the first shell at least partially defining a storage chamber and including an opening providing access (O, see figure below) to the storage chamber, the opening being adjacent to the first end portion; a second shell (S2, see figure below) extending outwardly from the first shell; a support member (15) adapted to support a spare tire (S), the support member being slidably positioned above the bottom portion and movable back and forth along a movement path from a first position (Figure 1) in which the support member is substantially disposed within the first shell and a second position (Figure 2) in which the support member is at least partially disposed outside the first shell and disposed at least partially inside the second shell; and a retention member (75/77/79) fixedly attached to the first shell, the retention member interfacing a side section of the support member

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and configured to permit sliding movement of the support member along the movement path with respect to the first shell (col. 4 lines 64+), and being operative to limit movement of the support member with respect to the first shell in at least one direction (upward) substantially perpendicular to the movement path.



Wilson fails to disclose the lower surface of the support member directly contacting the bottom of the first shell. Instead, Wilson discloses a series of rollers (33) positioned on the bottom of the first shell. The support member slides on the rollers instead of directly contacting the first shell. Fukushima et al., however, also disclose a similar sliding support member housed within a shell (14) and teach that the lower surface of the support member directly contacts a bottom portion (17) of the shell (Figure 3, col. 5 lines 51-54) in smooth sliding contact. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the sliding means of Wilson with that taught by Fukushima et al., since both are art equivalent smooth sliding means and that of Fukushima et al. would require less parts during assembly.

Regarding claim 2, the second end portion of the first shell as disclosed by Wilson includes rounded corners (Figures 1 and 2), the round shape corresponding to the round shape of a spare tire in that both are round or curved, effectively satisfying the limitations of the claim.

Regarding claim 3, Wilson fails to disclose a stopper being disposed adjacent the second end portion and configured to engage the support member. Fukushima et al., however, disclose stoppers (15) adjacent a second end portion of the shell (14) and configured to engage the support member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include at least one stopper member adjacent the second end portion of the first shell of Wilson, as taught by Fukushima et al., in order to help a user extend the support member from its stored position as shown in Figure 1 and also to absorb at least some of the impact force applied to the support member when pushed back into the stored position.

Regarding claim 4, Wilson discloses an outwardly projecting protrusion (71) on the support member but fails to disclose a complementary inwardly extending recess on the bottom portion of the first shell member, the recess adapted to receive the protrusion. Wilson discloses a recess (73) in which the protrusion is received to maintain the support member in the position shown in Figure 2. When in the first position, a position locking mechanism (75/77/79) is used to maintain the support member in its position. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the position locking mechanism (75/77/79) of Wilson with the other position locking mechanism (73) taught by Wilson,

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as both are effective means for retaining the support member in the desired position.

This modification would implement a recess in the first shell.

Regarding claim 5, the modified Wilson device as applied to claim 4 above includes a protrusion on the support member and a recess or groove in the first shell configured to engage the protrusion rather than a protrusion on the first shell and a recess on the support member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form a protrusion on the first shell and a recess on the support member, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. In re Einstein, 8 USPQ 167.

Regarding claims 6 and 7, the support member of the modified Wilson device includes an outer edge (51) on the support member, the outer edge extending outwardly and generally perpendicularly from the movement path. The outer edge interfaces with the retention members (75) when the support member is in the first position.

Regarding claim 8, the retention member portions (77/79) of Wilson are integral with the first shell.

Regarding claim 9, the retention member (75/77/79) of the modified Wilson device includes a round member (75) capable of rotation, effectively satisfying the limitations of the claim.

Regarding claim 11, Wilson discloses the claimed retention member (75/77/79) but does not specify a retention member on each side of the support member. It would have been obvious to one having ordinary skill in the art at the time the invention was

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made to include a retention member on both sides of the support member of Wilson since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Providing two such retention members, one on each side of the support member, would also serve to better retain the support member in the desired position.

Regarding claim 14, the shell of the modified Wilson device clearly has two sidewalls, or side portions, extending between the front and back walls, or the first and second end portions of the shell.

Regarding claim 15, the modified Wilson device as applied to claim 4 above includes a first shell, a second shell, support member and the first shell having a cooperative locking configuration (71/recess) for substantially inhibiting sliding movement of the support member relative to the shell along the movement path when the support member is at the first position, wherein a portion (71) of the cooperative locking configuration provided by the support member is further configured for substantially inhibiting sliding movement of the support member relative to the shell along the movement path when the support member is at the second position.

Regarding claims 16, 20, and 21, the cooperative locking geometry of the modified Wilson device as applied to claim 4 above includes complementary geometry or an aligned arrangement involving a flange (71).

Regarding claim 17, the complementary geometry of the modified Wilson device as applied to claim 4 above includes a flange (71) and a recess in the bottom portion of the front shell.

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Regarding claim 18, the recess of the modified Wilson device as applied to claim 4 above is located in the first shell.

Regarding claim 19, the modified Wilson device as applied to claim 4 above includes a recess (73) in the second shell and a recess in the first shell, effectively satisfying the limitations of the claim to the degree that they are understood.

Regarding claim 22 with respect to claims 21 and 15, the cooperative locking configuration set forth in claim 15 can be considered to comprise members (71/75/77/79) of Wilson which would satisfy the aligned arrangement limitation of claim 21. There is currently no structure in the claims that would prohibit members (71/75/77/79) of Wilson from being considered the cooperative locking configuration. The aligned arrangement (71/75/77/79) of Wilson includes apertures (77/79) adapted to receive a locking member (75), effectively satisfying the limitations of the claim.

Regarding claim 23, the locking member (75) can be considered a pin or a rod.

Regarding claim 27, Wilson discloses a retention member (29) fixedly attached to the first shell, the retention member interfacing a side section (51) of the support member and configured to permit sliding movement of the support member along the movement path with respect to the shell and being operative to limit movement of the support member with respect to the shell in at least one direction (upward) substantially perpendicular to the movement path.

3. Claims 12, 13, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Fukushima et al. as applied above, and further in view of Sotiroff et al. (US 6,516,983 B2).

The modified Wilson device includes the claimed features except for the vehicle in which it is mounted being a pickup truck. The modified Wilson device is implemented in the trunk of a car, as taught by Wilson himself. Sotiroff et al., however, teaches that a storage system implemented in the trunk of a car (Figures 1-4) can also be implemented in the bed of a pickup truck (Figures 5-6). One of ordinary skill in the art would have found it obvious to somehow mount the modified Wilson storage system in the bed of a pickup truck, as taught by Wilson, so that pickup truck owners could also enjoy the benefit of such a useful storage system.

4. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Fukushima et al. as applied above, and further in view of Pilliod (US 5,484,198 A).

The modified Wilson device includes the claimed features except for the retention member including a wheel or rotating member. Pilliod, however, also discloses a support member (drawer) and shell (52) system and teaches that rollers (40) may be attached to the shell to interact with a guide rail (10) implemented on the side of the support member in order to facilitate the support member's sliding movement. It would have been obvious to one having ordinary skill in the art at the time the invention was made to implement a roller/guide rail system, as that taught by Pilliod, on the modified Wilson device in order to facilitate the sliding movement of the support member within the shell.

Response to Arguments

5. Applicant's arguments filed 12/11/06 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER

JML
3/13/07